IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1542 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YUNUS UMARJI PATEL

Versus

GUJARAT STATE COOPERATIVE HOUSING FINANCE CORPORATION

Appearance:

1. Special Civil Application No. 1542 of 2004

MR SHIRISH JOSHI for Petitioner No. 1-51

HL PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/10/2004

ORAL JUDGEMENT

Rule. Shri Mihir Raval, Learned Advocate for M/s. H.L.Patel Advocates waives service of rule on

behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing.

2. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal dated 31.12.2003 in Misc. Application No.33 of 2003 in rejecting the application submitted by the petitioners for restoration of Appeal No.442 of 1999. Though the petitioners have prayed for quashing and setting aside the judgment and decree passed by the Board of Nominees dated 30.12.1998 in Lavad Case No.995 of 1987 and the order dated 9.12.2002 passed by the Tribunal in Appeal No.442 of 1999, in view of the fact that the present petition is being allowed and the order passed by the Tribunal in dismissing Misc. Application No.33 of 2003 is to be set aside while restoring Appeal No.442 of 1999, Learned Advocate appearing for the petitioners does not press the said relief as now pursuant to the order passed by this Court, Appeal No.442 of 1999 is required to be heard by the Tribunal on merits afresh.

3. Shri Baiju Joshi, Learned Advocate for the petitioners had submitted that hearing of Appeal No.442 of 1999 was adjourned to 16.12.2002 and inspite of the aforesaid fact, the appeal came to be dismissed exparte on 9.12.2002. Therefore, they moved an application for restoration of the appeal. However, though it is observed in the impugned order itself that the hearing of the appeal was adjourned to 16.12.2002 and the appeal came to be dismissed on 9.12.2002, the restoration application is not allowed.

4. Shri Mihir Raval, Learned Advocate for the respondents is not in a position to support the order passed by the Tribunal, more particularly, in view of the fact that in fact, the appeal was adjourned to 16.12.2002 and the same was dismissed for default exparte on 9.12.2002. Inspite of the fact and though it is even observed by the Tribunal in its impugned order that the hearing of the appeal was fixed on 16.12.2002 and the appeal came to be dismissed for default on 9.12.2002, the Tribunal has not allowed the restoration application. If the hearing of the appeal was fixed on 16.12.2002, there was no reason for the Tribunal to hear the appeal on 9.12.2002. If on 9.12.2002, if the Learned Advocate appearing for the petitioners was not present, no fault can be found with him because of the fact that the hearing of the appeal was fixed on 16.12.2002. In that view of the matter, the impugned order passed by the

Tribunal dated 31.12.2003 in Misc. Application No.33 of 2003 is required to be quashed and set aside and is hereby quashed and set aside. Misc. Application No.33 of 2003 is hereby allowed. The Tribunal is directed to decide and dispose of Appeal No.442 of 1999 afresh and in accordance with merits and after giving an opportunity of hearing to the parties. In view of the fact that the matter is very old, the Tribunal is directed to give priority for hearing of the above appeal. Rule is made absolute with no order as to costs.

(M.R.Shah, J)

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